

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215544

DATE: October 2, 1984

MATTER OF: MISSO Services Corporation

DIGEST:

1. There is no requirement that equipment once acquired by an agency under the 8(a) program be acquired by small business set-aside in future procurements.
2. There is nothing per se improper in a contracting officer refusing, after issuing a solicitation amendment, to extend the closing date for submission of initial proposals in a negotiated procurement; the determination whether an extension of the closing date is necessary is largely within the discretion of the contracting officer.
3. Contracting officer's failure to extend the closing date for proposal receipt which allegedly precluded a potential offeror from competing effectively does not render the procurement improper where adequate competition was obtained and there is no showing that the price at which the contract was awarded is unreasonable or that the agency was deliberately attempting to prevent the firm from competing.

MISSO Services Corporation protests any award under request for proposals (RFP) No. 00-84-R-51, issued by the Department of Agriculture for IBM code compatible processors. We deny the protest.

Agriculture issued the solicitation on April 11, 1984 following publication of a procurement synopsis in the Commerce Business Daily. The original deadline for

submission of initial proposals was May 11, but the deadline ultimately was extended to June 15 after several solicitation amendments. The sixth and final amendment was issued on June 13 after Agriculture discovered it inadvertently had incorporated by reference two unintended contract clauses that set the procurement aside for small businesses and for labor surplus area concerns. Amendment 6 deleted these clauses, eliminating both set-asides, but did not extend the closing date.

Agriculture solicited 23 firms, 4 of which, including MISSO, submitted proposals. Award was made to Vion Corporation at a price of \$193,000.^{1/}

MISSO, a small business concern, maintains that it was improper for Agriculture to withdraw the small business set-aside and conduct the procurement on an unrestricted basis. The processors being procured are intended as replacements for computer equipment currently being furnished by MISSO under an 8(a) contract, and it is MISSO's position that under Federal Acquisition Regulation (FAR), § 19.501(g), 48 Fed. Reg. 41,102, 42,171 (1983) (to be codified at 48 C.F.R. § 19.501(g)), equipment once acquired by set-aside must in the future be acquired by set-aside.

Section 19.501 of the FAR is inapplicable here. Where certain exceptions do not apply, this section requires repetitive set-asides only where (1) the requirement previously was satisfied through a small business set-aside procurement; and (2) repetitive set-asides are required by agency regulations. Neither circumstance is present here. MISSO received its current contract for the requirement through the Small Business Administration's 8(a) program, which is not covered by the small business set-aside regulations and does not involve a small business

^{1/} Award was made on or about August 14 in the face of MISSO's protest based, we have been advised, on the contracting officer's determination that this was an urgent requirement. The current equipment reportedly no longer is sufficient to meet Agriculture's increasing computing capacity needs.

set-aside procurement. See FAR, § 19.801, et seq., 48 Fed. Reg. 41,102, 42,171 (to be codified at 48 C.F.R. § 19.801, et seq.). In any event, Agriculture has promulgated no regulation requiring repetitive set-asides. We note that the coordinator of Agriculture's Office of Small and Disadvantaged Business Utilization concurred in the contracting officer's determination that this procurement was not appropriate for a small business set-aside.

MISSO asserts as an alternate basis of protest that Agriculture should have extended the closing date for receiving initial proposals after issuing Amendment 6, since removal of the small business set-aside had the effect of invalidating the business arrangements on which MISSO had based its intended proposal. MISSO states it was "unable to obtain revised pricing and delivery terms in the time allowed" following the amendment (2 days). Thus, although MISSO did submit a proposal, it apparently believes it was prevented from competing effectively.

There is no requirement that the closing date in a negotiated procurement be extended following a solicitation amendment. We have recognized that contracting officers have broad discretion in deciding whether such an extension is necessary. See, e.g., Tolica Construction Co., B-213028, Feb. 28, 1984, 84-1 CPD ¶ 244; Argus Manufacturing Corp., B-208922, Oct. 28, 1982, 82-2 CPD ¶ 389. This discretion also is evident in the applicable regulation, FAR, § 15.410, 48 Fed. Reg. 41,102, 42,171 (to be codified at 48 C.F.R. § 15.401), which states only that "the contracting officer shall determine if the closing date needs to be changed when amending a solicitation." The regulation establishes no objective standards for making this determination.

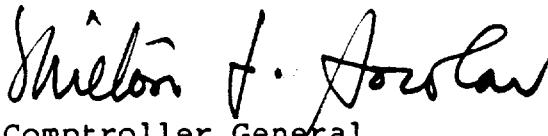
As the agency's refusal to extend the closing date was not per se improper, we are left to review this aspect of the protest under the standard we apply in considering all allegations to the effect that agency action has precluded a specific concern from competing or competing effectively. Under this standard, such agency action will not be fatal to a procurement where adequate competition and reasonable prices were obtained and there was no

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deliberate attempt to exclude the potential offeror. See Argus Manufacturing Corp., surpa.

Although it is not clear precisely why Agriculture would not extend the closing date here, MISSO does not allege, and we find no evidence, that Agriculture's actions were motivated by an intent to prevent MISSO from competing. Agriculture's refusal to extend applied to all offerors, not only MISSO. Agriculture solicited 23 firms to compete for the award, and received 4 proposals. We consider this to be adequate competition, and there is no allegation or indication that the price to be paid Vion is unreasonable. While it is unfortunate that Agriculture's actions may have made it difficult for MISSO to compete effectively, it appears that all offerors were treated fairly and equally. We therefore cannot object to the contracting officer's refusal to extend the closing date to accommodate MISSO.

The protest is denied.

for 
Comptroller General
of the United States